

#99

CITIZENS' REVIEW BOARD  
Team 7  
CASE #2013-111S

OFFICE USE ONLY  
Date Assigned 04-15-2014  
Date Completed 05-22-14  
Date Presented 05-27-14  
A 1 D 0 AB 1  
Changes No

Date of Incident: June 01, 2013  
Time of Incident: 9:22am  
Location of Incident: 100 Sea World Drive, San Diego, CA  
Date Assigned to I.A.: June 3, 2013

**CONFIDENTIAL: FOR EXCLUSIVE USE OF CITIZENS REVIEW BOARD**

OFFICER INVOLVED: BUTERA, Richard / POII, ID #5876  
Date of Hire: 05/10/2002 (11 years)  
S.D.P.D., Western Division – 1<sup>st</sup> Watch

WEAPON USED: Benelli, Model M4, 12 gauge Semi-Auto Shotgun, Serial  
#Y012703

WITNESS OFFICERS: BORRELLI, Nicolas / Sergeant, ID #4584  
Date of Hire: 10/09/1989 (23 years)  
S.D.P.D., Western Division – 1<sup>st</sup> Watch

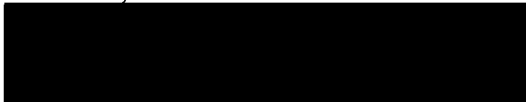
CARPENTER, John / POII, ID #5429  
Date of Hire: 12/01/1997 (15 years)  
S.D.P.D., Western Division – 1<sup>st</sup> Watch

GREEN, Bradford / POII, ID #6820  
Date of Hire: 04/23/2010 (3 years)  
S.D.P.D., Western Division – 1<sup>st</sup> Watch

**KELLINGTON, Michael / POII, ID #6384**

Date of Hire: 07/20/2007 (5 years)

S.D.P.D., Western Division – 1<sup>st</sup> Watch



**MARTINEZ, Jeffrey / POII, ID #5668**

Date of Hire: 02/14/2000 (13 years)

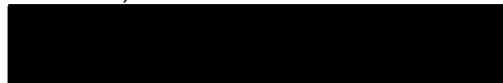
S.D.P.D., Western Division – 1<sup>st</sup> Watch



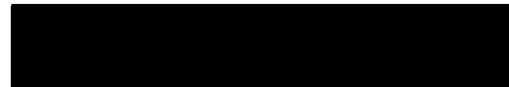
**TAGABAN, Esmeralda / Acting Sergeant (Detective), ID #5794**

Date of Hire: 02/02/2001 (12 years)

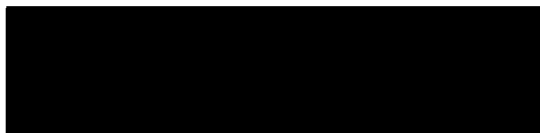
S.D.P.D., Western Division – 1<sup>st</sup> Watch



**CIVILIAN WITNESSES:**



**SUSPECT:**



**WEAPON USED:**

Folding Knife (used to simulate a firearm).

Allegation	Description Of Allegation	Subject Officer	Witness To Allegation	I.A. Finding	Team Finding
1) O.I.S	Officer Richard BUTERA used his firearm to stop what he perceived to be an imminent threat of great bodily injury or death to his fellow officers based on his reasonable belief that [REDACTED] was armed with a gun and was going to shoot.	Richard BUTERA	[REDACTED] [REDACTED] [REDACTED] P.O. CARPENTER , P.O. GREEN, P.O. KELLINGTO N, P.O. MARTINEZ, P.O. TAGABAN	WP	A
Investigators Notes:	N/A				

#### Summary:

On June 01, 2013, at 9:12am, San Diego Police Communications received a 911 call from [REDACTED] [REDACTED] stating that an individual was at her apartment complex located at [REDACTED] Sunset Cliffs Boulevard brandishing a firearm. The victim of the Assault with a Firearm was identified as [REDACTED] [REDACTED]. Officers were immediately dispatched to that location. While responding, officers were radioed information about the suspect, and that he fled in a gray 4-door Volkswagen.

While responding to the radio call, Officer CARPENTER located the suspect vehicle traveling northbound from Dusty Rhodes Park toward Sea World Drive. Officer CARPENTER broadcasted the license plate number and waited for cover. Officer MARTINEZ arrived and helped conduct a felony stop (also known as a "hot stop"), as additional officers began arriving. The stop took place at [REDACTED] Sea World Drive.

During the stop, the suspect, [REDACTED] [REDACTED] exited the vehicle and ran over to the passenger side of his vehicle. He began rummaging through items in the front passenger seat as officers were giving him orders to stop. [REDACTED] then went to the rear of his car and began rummaging through items in the trunk. He then returned to the front passenger door and continued rummaging through the interior of the car as officers continued to order him to stop and surrender. [REDACTED] then took an object from the car and turned toward officers and raised his hands up to about chest level and pointed the object in his hands at the officers (as if taking a shooting stance).

At this point, additional officers were on the scene, and Officer BUTERA discharged a round from his shotgun at [REDACTED] who then fell to the ground. [REDACTED] immediately got back up as officers continued giving him verbal commands. As soon as

█████ got back to his feet, he continued to take a stance like he was aiming a handgun at officers, while at the same time approaching the officers. Officer BUTERA discharged a round from his shotgun at █████ a second time, again knocking █████ to the ground. Officers handcuffed █████ and checked his vital signs before beginning CPR.

Paramedics responded to the scene and transported █████ to UCSD Medical. █████ did not make any statements at the scene or in the ambulance. He was pronounced deceased by █████ at 10:44am.

### **Witnesses to the Initial Altercation**

█████ █████ did not know █████ very well. █████ had been staying with a few different friends of hers within her apartment complex recently, which is located on Sun Set Cliffs Boulevard. On the morning of June 1<sup>st</sup>, 2013, she saw █████ chasing her friend and neighbor █████ down the street, just outside of their residence. At one point, she saw █████ point a gun at █████ and at himself. She saw █████ flee in a gray 4-door Volkswagen, and immediately called 911 to report the incident.

█████ █████ states that on the morning of June 6<sup>th</sup>, 2013, he got into a dispute with █████ because he suspected him of stealing and using his credit card information while staying at █████ apartment on Sun Set Cliffs Boulevard. He said that at one point, █████ ran off and came back with a gun and pointed it at his (█████) head. He reports that █████ eventually got into a car and sped off northbound and almost hit a parked car.

### **Civilian Witnesses to the Police Shooting**

█████ █████ witnessed the shooting from inside his vehicle, which he estimated to be about 40- 50 yards away. He said officers were pointing their guns at a shirtless male, who was going back and forth between the passenger side and the rear of the vehicle. █████ said the male was not obeying the commands that officers were yelling at him. He said that at one point, while at the back of the vehicle, the male raised his hands to about chest level, pointing toward the officers. █████ could not see what was in the male's hands, but described that his body was positioned similar to someone aiming a handgun. He heard a gunshot and saw the male drop to the ground and roll about 15 feet down an embankment. He then saw the male immediately get back to his feet and walk toward the officers with the same positioning, like he was pointing a handgun at them again. He heard another gunshot and saw the male drop to the ground again. He was not sure which officer fired the shots, and stated that he was not able to see all officers due to a partly obstructed view.

█████ video taped the incident, which he turned over to police for evidence. This video tape was included in the case file, and was reviewed by Team 7. The video is consistent with civilian and officer accounts of the incident.

██████████ also witnessed the shooting from her vehicle which was nearby. Her memory of the exact details was limited, but everything she did recall was consistent with ██████████ and the officers' account.

██████████ witnessed the shooting from inside her vehicle, which she estimated to be about 50 feet away. During the actual firing of the gun, ██████████ was ducked down in her vehicle. She thought ██████████ might be getting a gun from his vehicle, and she thought she could end up being right in the line of fire, so she tried to take cover by ducking down. She had trouble recalling everything clearly and sequentially, but all of her observations were consistent with those of the other witnesses and officers.

### Officer Interviews

Officers BUTERA, CARPENTER, GREEN, KELLINGTON, MARTINEZ, Acting Sergeant TAGABAN, and Sergeant BORRELLI all stated that ██████████ was ignoring commands from officers while rummaging through the front passenger side and trunk of his vehicle. They all stated that ██████████ positioned himself like he was aiming a handgun at officers each of the two times that he was shot.

Additionally, Officers CARPENTER and MARTINEZ, who were the first officers on scene, saw ██████████ pull his pants down and expose his penis to them while near the trunk of the vehicle. They also said he appeared to be smiling at this time.

Some of the officers' exact accounts of what they saw in ██████████ hands varied slightly:

Officer BUTERA saw ██████████ holding an item with a black handle and a silver body. He believed it was a handgun.

Sergeant BORRELLI could not see what was in ██████████ hands, but assumed it was a gun by the way ██████████ was holding it and positioned.

Officer CARPENTER did not see anything in ██████████ hands, but saw him lift his hands like he was pointing a gun.

Officer GREEN doesn't recall if there was anything in ██████████ hands when he lifted them like he was aiming a gun. Officer GREEN said he did not have a good view though.

Officers KELLINGTON and MARTINEZ said that from their angle, they could see that ██████████ was holding a knife in a way that simulated holding a gun.

Acting Sergeant TAGABAN said<sup>5</sup> he could see that ██████████ was holding something in his hands and pointing it like a gun, but he could not actually see what was in ██████████ hands.

## **Applicable Policies**

San Diego Police Department Procedure 1.05 (Firearms Policy), Section III, B, 2, dated 03/22/13, states in part:

B. No officer shall discharge a firearm in the performance of duty except:

2. When the officer has a reasonable belief that a subject (or animal) poses an imminent threat of death or serious bodily injury to the officer or another person.

San Diego Police Department Procedure 1.04, Use of Force, Section IV, dated 02/9/12, states in part:

K. Life-threatening Behavior – behavior likely to cause serious bodily injury or death.

San Diego Police Department Procedure 1.04, Use of Force, Section IV, dated 02/9/12, states in part:

E. Deadly Force – force that creates a substantial risk of causing death or serious bodily injury.

On 10/22/13, IA obtained the Firearms Proficiency Report for Officer BUTERA, which showed that the weapon he used in this incident was authorized for use as of August 3<sup>rd</sup>, 2007. His last firearms qualification was January 22<sup>nd</sup>, 2013. His approved weapon was a Benelli, Model M4, 12 gauge semi-auto shotgun, serial # Y012703. This is the Department approved personal weapon that was used during the shooting.

Criminalist [REDACTED] conducted an examination of the gun used by Officer BUTERA in this incident. [REDACTED] found the shotgun had one shotshell in the chamber and four shotshells in the tubular magazine. The shotshells were Federal Premium Tactical 00 Buck, which is consistent with Department issued ammunition. The total maximum capacity of the shotgun is one shotshell in the lifter/carrier and six shotshells in the tubular magazine. This indicates that two shotshells had been fired from the shotgun. The shotgun was also test fired and appeared to operate normally.

On April 2<sup>nd</sup>, 2014, IA received a copy of the District Attorney's letter dated March 20, 2014. The conclusion of the letter states:

"In this case, Mr. [REDACTED] was suspected of assaulting an acquaintance by pointing a pistol at his head. [REDACTED] vehicle was spotted by an officer and a high risk vehicle stop was conducted. Officers ordered [REDACTED] to surrender at gunpoint. Mr. [REDACTED] ignored the commands and rummaged through his vehicle, tossing various objects into the street in an apparent search

for something. [REDACTED] would intermittently take provocative shooting postures at the officers. [REDACTED] armed himself with an opened folding knife and held it out with both arms extended as if he was holding a handgun. Officer BUTERA thought [REDACTED] was armed with a handgun and was about to shoot at the officers conducting the stop. BUTERA shot and struck [REDACTED]. [REDACTED] fell but quickly rose and took another threatening shooting posture. [REDACTED] then approached the area where he dropped his knife and BUTERA fired again, believing [REDACTED] was reaching for a firearm, fatally wounding [REDACTED].

Based on these circumstances, BUTERA fired in lawful defense of other officers. He therefore bears no criminal liability for his actions."

Officer BUTERA used his firearm to stop what he perceived to be an imminent threat of great bodily injury or death to his fellow officers based on his reasonable belief that [REDACTED] was armed with a handgun and was going to shoot. Based upon the interviews, the evidence, and the Homicide Unit's investigation, IA found Officer BUTERA's use of his firearm was **WITHIN POLICY**, and Team 7 **AGREES**.

<b>Team 1 Findings (circle one)</b>	<b>A   A/C   D/C</b>	<b>A   A/C   D/C</b>	<b>A   A/C   D/C</b>
<b>Team 1 Signatures</b>	Signature	Signature	Signature
	Date	Date	Date
	[REDACTED]	[REDACTED]	[REDACTED]